

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 166 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SANDIP DADABHAI SONI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner herein challenges the order of preventive detention dated 13th August, 1998, made by the Commissioner of Police, Surat City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The grounds of detention furnished to the petitioner suggest that two offences punishable under sections 394 and 114 IPC and section 135 of the Bombay Police Act have been registered against the petitioner on 25th October, 1997 and on 9th May, 1998. In first of the offence, the petitioner is alleged to have robbed the complainant of a sum of Rs.2300/-, and is alleged to have caused an injury with a knife. In the second offence, the petitioner is alleged to have assaulted one Najakat Husain over a dispute relating to the T.V.Cable, and an offence punishable under sections 323, 326, 294-B and 114 EPIC and section 135 of the Bombay Police Act has been registered against the petitioner. Hence, the petitioner having committed offence under Chapters XVI and XVII of the IPC, is held to be a 'dangerous person' within the meaning of section 2 (c) of the Act. Besides, two witnesses, on assurance of anonymity, have given statements before the police. The first witness has stated that on 13th June, 1998, at around 5-00 O'clock in the afternoon, the petitioner and two others stopped the vehicle of the witness and asked the witness to carry them from place to place in Surat city. However, they refused to pay fare and upon demand, the petitioner was enraged and assaulted the witness with a knife. The witness, however, succeeded in avoiding the assault with slight injury. Thereupon the petitioner started to beat the witness. Upon an alarm being raised by the witness, the people had gathered and the petitioner and his associates tried to assault the people by wielding open knife. The people having thus been terrorised, started running away and the near-by shops were immediately closed down. The petitioner also robbed the witness of his cash worth Rs.160/-. The second witness has stated that on 10th July, 1998 at around 7-00 O'clock in the evening, the petitioner and his associates had demanded a sum of Rs.2,000/- from the witness. The witness refused to give the said amount. The petitioner feeling enraged, started beating the witness and upon his raising an alarm, the people had gathered there. The petitioner and his associates persuaded the crowd with open knife, thus, created terror in the area. The statements of both the witnesses were recorded by the Police Inspector on 15th July, 1998 and have been verified by the Detaining Authority on 13th August, 1998.

The only ground on which the order of detention is challenged are - (a) the activities of the petitioner

do not disturb the public order and can not be said to be prejudicial to the maintenance of public order; and (b) the mother of the petitioner had made a representation to the Advisory Board on 6th September, 1998. The said representation was decided by the State Government on 21st September, 1998 i.e. after a long delay of 15 days.

Mrs. Patel, the learned advocate appearing for the petitioner has relied upon the judgment of the Supreme Court in the matters of MUSTAKMIYA JABBARMIYA SHAIKH VS M.M.MEHTA COMMISSIONER OF POLICE & ANR (1995 {2} GLR, 1268); SMT. TARRANNUM VS UNION OF INDIA & ORS (AIR, 1998, SC, 1013). She has also relied upon the judgment of this court in the matter of HARIJAN MAGANBHAI CHATURBHAI VS DISTRICT MAGISTRATE, SURENDRANAGAR & ORS (1999 {2} GLR, 1401. In the matter of Mustakmiya (supra), the court has considered the scope and ambit of the word 'public order' as against the 'law and order'. Considering the facts on the record, the court held that "Taking the aforesaid two incidents and the allegations on their face value as they are, it is difficult to comprehend that they were the incidents involving public order. They were incidents directed against single individuals having no adverse effects prejudicial to the maintenance of public order, disturbing the even tempo of life or the peace and tranquility of the locality. " Similar is the view expressed by the Hon'ble Supreme Court in the matter of Smt. Tarrannum (supra), and this court in the matter of Harijan Maganbhai Chaturbhai (supra).

It is true that something more is required for disturbance to the public order than a mere breach of law and order. Every offence disturbs the law and order. However, the same is not true for public order. The public order can be said to have been adversely affected only if the act in question has disturbed the even tempo of life or public tranquility. On the facts of the present case, it is apparent that the petitioner's activities have resulted into disturbance to the even tempo of life and the public tranquility, may be for a short period. In my view, therefore, the activities of the petitioner can not be said to be a mere breach of law and order, but it also has an element of being detrimental to the maintenance of public order.

The petitioner has also raised the ground of delay in considering the representation made by his mother, by making an amendment. The same is, therefore, not answered by the State Government by filing a counter-affidavit. However, the learned AGP Ms. Punani

has perused the records of the matter and has submitted that the representation dated 6th September, 1998, was made by the mother of the petitioner to the Advisory Board. The same was forwarded to the State Government along with the opinion of the Advisory Board on 21st September, 1998, which was immediately considered and decided on the same day i.e. on 21st September, 1998. That being so, the representation can not be said to have been decided belatedly.

I have perused the grounds of detention and the supporting material. The FIRs filed in two offences disclose the offences against the persons which is an offence against the individual and can not amount to breach of public order. However, though the petitioner in the first offence was released on conditional bail, not only the petitioner had committed breach of the conditions, he has also committed another offence of the similar nature. Hence, it can safely be held that the petitioner is a habitual offender and consequently a 'dangerous person'. The narrations made by the witnesses, if true, certainly relate to the incidents which has disturbed the public order in the area in which the said offences were committed. The offence is also of a similar nature. Since the witnesses were apprehensive of retaliation, they were not agreeable to lodge formal complaint against the petitioner. Whether the statements given by the witnesses are true or not, is examined by the Detaining Authority personally. The satisfaction of the Detaining Authority is manifest in the grounds of detention itself. It is categorically stated that the Detaining Authority has satisfied himself that the contents of the statements given by the witnesses were true and that the apprehension voiced by them was also genuine. The apprehension of the witnesses is also manifest on the statements given by the said witnesses. In spite of the assurance of police protection, they have not agreed to lodge a formal complaint against the petitioner, and they have given the statements only on assurance of anonymity. Hence, in my view, not only the petitioner is a habitual offender, his activities are also detrimental to the maintenance of the public order.

For the above reasons, the petition is dismissed.
Rule is discharged.

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JOSHI